

REMARKS

Initially, Applicants have amended the specification. No new matter has been added. Importantly, the specification has not been amended for any reasons related to patentability.

5 Additionally, Applicants believe that the foregoing comments overcome the objections and rejections set forth in the September 23, 2004 Office Action.

10 **I. THE EXAMINER'S OBJECTIONS**

SPECIFICATION

The Examiner objected to the Abstract because "it contains extraneous words, and contains more than 150 words."

Office Action dated September 23, 2004, page 2. As a result,

15 Applicants have amended the Abstract to comply with MPEP §608.01(b).

II. THE EXAMINER'S REJECTIONS

35 U.S.C. § 103

20 The Examiner rejected Claims 1,2,4,5,9-20,22,24-38,42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over Ruffolo *et al.*, U.S. Patent Number 6,236,807 (hereafter "Ruffolo") in view of Millan, U.S. Patent Number 6,278,840

(hereafter "Millan") or Junkel, U.S. Patent Number 6,044,202
(hereafter "Junkel"). The Examiner states that Ruffolo et al

5 "shows an air freshener with a housing for
holding a circuit having a light emitting
diode, a heater disposed in a ceramic block
for conducting or radiating heat, electrical
connectors to receive current from a power
source, a container made of translucent
10 material, a decorative shield, a wick
inserted in the container, the housing with
a socket for holding the container, and a dome
for venting out of facilitating the release
of a heated substance." Office Action dated September 23,
15 2004, pages 2-3.

The Examiner cited Millan and Junkel to show an air freshener
"with a resistor as the heater." Office Action dated September
23, 2004, page 3.

20 Next, the Examiner rejected Claims 3, 20, 21, 47, 48, 53,
54, and 58-66 as unpatentable over Ruffolo in view of Millan or
Junkel in further view of Wattson, U.S. Patent Number 3,373,341
(hereinafter "Wattson") or Roland et al, U.S. Patent Number
3,386,005 (hereinafter "Roland"). The Examiner admitted that
25 Ruffolo in view of Millan or Junkel do not teach the apparatus
with a shunt diode including a full-wave bridge rectifier.
Office Action dated September 23, 2004, page 4. The Examiner
cites Wattson and Roland for showing this feature. *Id.*

Third, the Examiner rejected Claims 6,23 and 39 as being
30 unpatentable over Ruffolo in view of Millan or Junkel in further
view of Jackson, U.S. Patent Number 5,274,215 (hereafter

"Jackson") or Patel, U.S. Patent Number 5,716,119 (hereafter "Patel"). Specifically, the Examiner admitted that Ruffolo in view of Millan or Junkel does not show a fiber optical cable coupled to the light emitting diode. Office Action dated 5 September 23, 2004, page 4. However, the Examiner cites Jackson and Patel for teaching an air freshener with a fiber optical cable. *Id.*

Next, Claims 7,8,40 and 41 are rejected as unpatentable over Ruffolo in view of Millan or Junkel in further view of 10 Muderlak et al., U.S. Patent Number 5,175,791 (hereinafter "Muderlak"). The Examiner cites Muderlak to teach an air freshener with an electrical thermal fuse to prevent overheating, while admitting that the combination of Ruffolo and Millan or Junkel does not teach this limitation. Office Action 15 dated September 23, 2004, page 5.

Further, the Examiner rejected Claim 55 over Ruffolo in view of Millan, Junkel, Wattson and Roland in view of Patel or Jackson. The Examiner stated that the combination of Ruffolo, Millan, Junkel, Wattson, and Roland teaches the invention except 20 for a fiber optic cable. The Examiner cites Jackson and Patel to teach a device that utilizes optical cables for aesthetic purposes. Office Action dated September 23, 2004, page 5.

Finally, the Examiner rejected Claims 56 and 57 as unpatentable over Ruffolo in view of Millan, Junkel, Wattson,

and Roland in further view of Muderlak. The Examiner admitted that the combination of Ruffolo, Millan, Junkel, Wattson, and Roland failed to teach a device with an electrical thermal fuse. Office Action dated September 23, 2004, page 5.

5 According to the Examiner, Muderlak is cited to "show an air freshener with an electrical thermal fuse to prevent overheating." Office Action dated September 23, 2004, page 6.

10 III. THE EXAMINER'S OBJECTIONS AND REJECTIONS SHOULD BE WITHDRAWN

A. OBJECTIONS

SPECIFICATION

The Examiner objected to the abstract because it contained more than 150 words, and because the Abstract used extraneous 15 words. Applicants respectfully submit that the amendment to the Abstract overcomes this objection.

B. REJECTIONS

35 U.S.C. § 103

20 The Examiner rejected all of the claims in the pending application as obvious in view of Ruffolo, further in view of some combination with Jackson, Junkel, Millan, Wattson, Patel and Muderlak.

Applicants respectfully submit that Ruffolo, et al., is an improper reference under 35 U.S.C. §103. Specifically, U.S. Patent Application Number 10/656,752 and U.S. Patent Number 6,236,807 (Ruffolo et al.) were, at the time the invention of 5 U.S. Patent Application Number 10/656,752 was made, owned by Bath & Body Works, a corporation. According to MPEP §706.02(l) and 35 U.S.C. § 103(c), if a prior art reference is commonly owned at the time an invention was made subject to a current U.S. Patent Application, the prior art reference cannot be used 10 to sustain a 35 U.S.C. §103(a) rejection.

According to MPEP §706.02(l) a statement alone alleging common ownership is adequate proof of common ownership. However, section §706.02(l) states that further evidence of common ownership may be provided. To that end, Applicants have 15 attached: (i) copies of executed assignments of U.S. Patent Application Number 10/656,752; (ii) a copy of the Notice of Recordation from the U.S. Patent and Trademark Office recording the assignment at Reel Number 014488, Frame number 0611; and (iii) the results of an assignment search from the PTO's website 20 that indicates that the assignment of U.S. Patent Number 6,236,807 to Bath & Body Works was recorded at Reel number 01503 and Frame number 0237. Therefore, the Applicants respectfully submit that Ruffolo et al. is an impermissible reference under 35 U.S.C. §103.

In order for a claimed invention to be obvious either alone or in view of a combination of references, three criteria must be met: 1) there must exist a suggestion or motivation to modify the reference or to combine reference teachings; 2) there 5 must be a reasonable expectation of success; and 3) the prior art references, when combined, must teach or suggest all of the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MANUAL OF PATENT EXAMINING PROCEDURE § 2143-2143.03.

All of the rejections by the Examiner rely on Ruffolo as the 10 primary source for maintaining an obviousness rejection. Since this reference is improper and must be removed, and no combination of Millan, Junkel, Patel, Jackson, or Muderlak teaches each and every claim limitation, the Examiner's rejections should be withdrawn.

CONCLUSION

Applicants submit that the specification, drawings, and all pending claims represent a patentable contribution to the art and are in condition for allowance. Early and favorable action
5 is accordingly solicited.

Respectfully submitted,

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